MAY 21
MICHAEL RODAK, J

SUPREME COURT of the UNITED STATES

October Term, 1973

No. 73-1581

Ekberg Shipping Corp.,

Petitioner,

-against-

Elena Jerezano Moncada,

Respondent.

OPPOSING BRIEF OF THE RESPONDENT ELENA JEREZANO MONCADA TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thomas M. Breen
Attorney for Respondent
160 Broadway
New York, New York 10038

INDEX

	Page
Question Presented	1
Statutes Involved	2
Statement of the Case	4
Reasons for Denying the Writ	10
Point I - The United States Courts Have Followed Congressional Policy Consistently in Holding That the Jones Act 46 U.S.C.A. 688 Applies to Foreign-Flag Vessels When There Are Substantial Contacts With the United States	10
Point II - When the Courts Have Consistently Applied Congressional Policy on the Jones Act for Many Years, No Good Reason Exists to Re-examine These Decisions and to Allow Foreign-Flag American Citizen Shipowners to Escape United States Taxes Pay Lower Wages and Ignore United States Ship Safety Standards	18
Conclusion	22

TABLE OF AUTHORITIES

Cases	Page
Afroyim v. Rusk, 387 U.S. 253 (1967)	19
Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437 (2 Cir. 1959) cert. den. 359 U.S. 1000 (1959)	8,15-16
Benz v. Compania Naviera Hidalgo, 353 U.S. 138 (1957)	13
Bobolakis V. Compania Panamena Maritima San Gerassimo S.A. 168 F. Supp. 236 (S.D.N.Y.1958)	19
Carroll v. United States, 133 F.2d 690 (2 Cir. 1943)	21
Gerradin v. United Fruit Co. 60 F.2d 927 (2 Cir. 1932)	13-14,18,21
Groves v. Universe Tankships, Inc. 308 F. Supp. 826 (S.D.N.Y.1970)	21
Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306(1970)	8,11,12,13,15,21
Iroquois, The 194 U.S. 241, 24 S. Ct. 640	9
Lauritzen v. Larsen, 345 U.S. 571 (1953)	12,21

	Page
Lopes v. S.S. Ocean Daphne, 337 F. 2d 777 (4 Cir. 1964)	18
Marchetti v. United States, 390 U.S. 39 (1968)	19
McCulloch v. Sociedad Nacional, 372 U.S. 10 (1963)	12,13
Monteiro v. Sociedad Maritima San Nicolas, S.A. 280 F. 2d 568 (2 Cir. 1960)	19-20
Pandazopoulos v. Universal Cruise Line, Inc., 365 F. Supp. 208 (S.D.N.Y. 1973)	19
Pavlou v. Ocean Traders Marine Corporation, 211 F. Supp. 320 (S.D.N.Y. 1962)	21
Philips v. Star Overall Dry Cleaning Co. Inc., 55 F. Supp. 238 (S.D.N.Y. 1944) affirmed 149 F. 2d 417 (2 Cir. 1945)	17
Voyiatzis v. National Shipping and Trading Corporation, 199 F. Supp. 920 (S.D.N.Y. 1961)	21
Windward Shipping (London) Ltd. v. American Radio Ass'n - U.S. - 42 LW 4234 (2/19/74)	15

Page

Zielinski v. Empresa Hondurena de Vapores, 113 F.Supp. 93 (S.D.N.Y. 1953) 21

Statutes

Jones Act (46 U.S.C.A. 688) 2

Liberian Maritime Law of Liberian Code of Laws Title 22, Section 30 2,9

Rules

Rules of Civil Procedure for the United States District Courts
Rule 38(d) 3
Rule 39(a) 3

Other

Webster's Third New International Dictionary 17

In The

: COURT of the UNITED STATES

October Term, 1973

No. 73-1581

Ekberg Shipping Corp.,

Petitioner,

-against-

Elena Jerezano Moncada,

Respondent.

NG BRIEF OF THE RESPONDENT
JEREZANO MONCADA TO THE
ON FOR A WRIT OF CERTIORARI
E UNITED STATES COURT OF
LS FOR THE SECOND CIRCUIT

ezano Moncada, respondent, prays that
Court of the United States refuse to
of certiorari to review the judgment of
ates Court of Appeals for the Second
red in this action on January 21st, 1974.

Question Presented

ondent disagrees with the question pre-
petitioner's brief. The respondent
he proper question is:

ng out Congressional policies and pur-
the Court of Appeals correct in deciding
s were substantial between transactions
is case and the United States so that the
:6 U.S.C.A 688) applied?

Statutes Involved

The text of the Jones Act (46 U.S.C.A. 688) follows:

"Section 688. Recovery for injury to or death of a seaman

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, Section 20, 38 Stat. 1185; June 5, 1920, c. 250, Section 33, 41 Stat. 1007."

The Liberian Maritime Law of the Liberian Code of Laws states as follows:

"Adoption of General American Maritime Law. Insofar as it does not conflict with any other provisions of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia." Title 22, Section 30.

Rules 38(d) and 39(a) of the Rules of Civil Procedure for the United States District Courts read as follows:

"Rule 38. Jury Trial of Right.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of a trial by jury. A demand for trial by jury as herein provided may not be withdrawn without the consent of the parties."

"Rule 39. Trial by Jury or by the Court.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by a jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States."

Statement Of The Case

The respondent can agree with some of the facts enunciated in the petitoner's statement but desires to aver the following as the facts of the case.

The plaintiff, Elena Jerezano Moncada, is the 53 year old widow of the decedent Arturo Moncada. In addition to his widow, the decedent left four minor children who were 17, 16, 12 and 10 at the time of his death. Under the laws of Honduras, of which both the plaintiff and decedent were citizens, the widow is the personal representative of her deceased husband and entitled to bring an action to recover damages for the personal injuries suffered by her husband and for his death both under the Jones Act and the General Maritime Law. The decedent was the sole support of his widow and children.

The decedent Arturo Moncada was an able bodied seaman employed between June 12, 1968 and September 27, 1968 aboard the S.S. Ekberg. His earnings were $90.00 per month plus 40¢ an hour overtime and found. The defendant Ekberg Shipping Corp., a Liberian Corporation, admits ownership of the vessel and employment of the decedent while he served aboard the S.S. Ekberg (40a). The principal business of the S.A. Lumber & Shipping Co., Inc., a New York Corporation with an office in New York City, was to manage and operate the S.S. Ekberg (5a, 17a and 39a). The Lemuria Shipping Corporation, a New York corporation with an office in New York City was the

chartering broker of the vessel (4a, 19a and 39a). The base of business operations of the S. S. Ekberg was in New York (48a).

So far as a contract of employment is concerned in the case on appeal - the following is from the cross examination of Mr. Chimes - the principal owner of the three defendants (49a):

Question - "Do you have a copy of the contract that you had with Sindimar? "

Answer - "Not with me, but there should be one, but I am not certain where it is."

The widow stated on her examination that she received no money from the shipowner except the remaining wages earned by the decedent while he was still alive.

Witness Aurelio Juarez, a crew member of the S. S. Ekberg testified at the trial on behalf of the plaintiff. He stated that at about ten o'clock in the morning of September 27th, 1968, when the vessel was docked at Maceio, Brazil, the decedent Arturo Moncada became ill. He was weak, sweating, had a pallor and suffered difficulty in breathing. Mr. Juarez stated that Chief Mate Gomez and another seaman removed Mr. Moncada to his cabin during the morning of September 27, 1968.

At noontime Mr. Juarez and two other seamen told the Master about Moncada's worsening illness and they requested medical treatment for the sick seaman. Again at three o'clock on the same afternoon witness Juarez reported to the Captain about

the physical condition of Mr. Moncada. The Master replied that he had no money to get medical attention for Mr. Moncada and that he would not call a doctor. About 5:00 P.M. Juarez went ashore and called a doctor. Then the witness stated that a doctor from Maceio came aboard the vessel with a nurse about 6:30 P.M. When the doctor examined Moncada at that time Moncada was declared dead.

The body of the decedent was taken to a morgue and the medical examiner listed the causes of death as pulmonary congestion and acute edema.

The plaintiff claims that prompt medical attention would have saved the decedent's life. The plaintiff introduced expert medical testimony at the trial. This doctor testified that if the doctor in Maceio had given the decedent digitalis, he would not have died. If a doctor had been summoned around noontime or during the afternoon, the injection of digitalis would have been effective.

A jury of six people was empaneled in this action. Mrs. Moncada, the personal representative, was the only witness to testify before the jury. In the jury's absence, the defendant called George J. Chimes. Mr. Chimes stated that he had an ownership or principal interest in the three corporations (38a). Mr. Chimes testified that all three corporations were substantially American owned companies (38a). He further stated that the majority of the crew were Honduran and the officers of the crew were Spanish (43a, 44a). Also, that the business reason for employing the foreign crew was that it was more economical (44a). During the time the decedent was on the ship, it flew

the Liberian flag.

Mr. Chimes admitted on cross examination that the business of the S.S. Ekberg was directed from New York and that the base of business operations was in New York (48a). Further, Mr. Chimes declared that the three companies had their books and records as well as their bank accounts in New York (48a). In addition, the chartering of the vessel was arranged in New York (49a).

Mr. Chimes, as stated above, had a principal interest in the three defendants (38a). After his testimony and colloquy with counsel the Court stated that there were insufficient American contacts to warrant application of the Jones Act (46 U.S.C.A. 688). The Court excused the jury over the objection of plaintiff's counsel and proceeded under the General Maritime Law without a jury (52a-54a).

When the trial continued, the plaintiff called as witnesses, Aurelio Juarez, a crew member of the S.S. Ekberg, Teobaldo Enamorado, a lawyer and an expert on Honduran Law and Dr. Robert Tuby, a medical expert. After the defendant called Captain Gaurrochena, master of the vessel, the trial concluded. At that time, the Court requested proposed findings of fact and conclusions of law from both parties and stated that it would call the attorneys for a summation.

On November 29th, 1972, the Court issued findings of fact and conclusions of law dismissing

the plaintiff's complaint. These were filed on November 30, 1972. The attorneys were not called back for summation. (Findings of Fact 108a - 111a) Conclusions of Law 111a - 113a).

REJECTING THE JURY TRIAL

The complaint pleaded separate causes of action under both the Jones Act and General Maritime Law. Substantial contacts were proven within the meaning of Hellenic Lines Ltd. v. Rhoditis 398 U.S. 306, 90 S. Ct. 1731 (1970) and Bartholomew v. Universe Tankships, Inc. 263 F. 2d 437 (2 Cir. 1959) cert. den 395 U.S. 1000, 79 S. Ct. 1138 (1959). These contacts entitled the plaintiff to recover under the Jones Act. These contacts consisted of:

1. All of the shareholders of the defendants were American (23a).

2. All of the officers of the defendants were American (23a).

3. Between May, 1967 and November, 1968, 40% of the voyages of the vessel were either to or from some United States port and approximately 60% of the voyages were entirely foreign (25a).

4. Direction of the S. S. Ekberg was from New York and the base of business operations of the S. S. Ekberg was in New York (48a).

5. Bank accounts, books and records of the defendants were in New York (48a-49a).

6. Chartering of the vessel was arranged in New York (49a).

7. The Lemuria Shipping Corporation, a New York Corporation, was the chartering broker for the vessel (4a, 17a and 39a).

8. Another New York Corporation - S. A. Lumber & Shipping Co., Inc., managed and operated the S. S. Ekberg (5a, 17a and 39a).

It is relevant that the vessel flew the Liberian flag. Title 22, Section 30 - The Liberian Maritime Law of the Liberian Code of Laws states as follows:

"Adoption of General American Maritime Law. -Insofar as it does not conflict with any other provisions of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia."

Under the non-statutory General Maritime Law of the United States the shipowner is required to provide such medical care and attention as the situation requires. The shipowner is liable for failure to provide medical treatment regardless of negligence. The Iroquois, 194 U.S. 241, 24 S. Ct. 640.

Reasons for Denying the Writ

Point I

THE UNITED STATES COURTS HAVE FOLLOWED CONGRESSIONAL POLICY CONSISTENTLY IN HOLDING THAT THE JONES ACT 46 U.S.C.A. 688 APPLIES TO FOREIGN-FLAG VESSELS WHEN THERE ARE SUBSTANTIAL CONTACTS WITH THE UNITED STATES

There are three reasons for the existence of flags of convenience in competition with American flag vessels:

1. Escape from taxes.

2. Lower wages - the decedent here made $90.00 per month plus 40¢ per hour overtime.

3. High safety standards for United States vessels can be ignored.

Congressional policy was expressly made to promote the American Merchant Marine. The petitioner recognizes the law that has been applied in the furthering of the policy but would like the law to be otherwise.

The existing interpretation of the Jones Act reflects Congressional policy to equalize conditions between flags of convenience and American flag vessels.

In Hellenic Lines Ltd. v. Rhoditis 398 U.S. 306, 90 S. Ct. 1731 (1970) the Court states in its opinion:

> "Pericles became a lawful permanent resident alien in 1952. We extend to such an alien the same constitutional protection of due process that we accord citizens. Chew vs. Colding, 344 U.S. 590, 596, 1953 A.M.C. 250, 255. The injury occurred here. The forum is a United States Court. Pericles' base of operations is New York. The Hellenic Hero was not a casual visitor; rather, it and its sister ships were earning income from cargo originating or terminating here. We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act "employer". The flag, the nationality of the seaman, the fact that this employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts which this alien owner has with this country. If, as stated in Bartholomew vs. Universe Tankships, Inc. 1959 A.M.C. 273, 263 F. (2d) 437, the liberal purposes of the Jones Act are to be effectuated, the facade of the operation must be considered as minor,

compared with the real nature of the operational contacts that this ship and this owner have with the United States. By that test the Court of Appeals was clearly right in holding that petitioner was an "employer" under the Jones Act. Affirmed."

The prevailing opinion is between pages 307 and 310; the dissenting opinion starts at page 311.

The Rhoditis case followed the opinion in the Lauritzen case decided in the United States Supreme Court in 1953, as the following quotation shows (Lauritzen v. Larsen 345 U.S. 571, 73 S. Ct. 921) (1953):

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American Shipowners the obligations which our law places upon them." 345 U.S., p. 587, 73 S. Ct., p. 931.

In McCulloch v. Sociedad Nacional, 372 U.S. 10, 83 S. Ct. 671, the Supreme Court followed the Congressional policy in declaring that the National Labor Relations Act existed for American working men and their employers. The Supreme Court refused to consider contacts on the applicability

of this legislation. On page 19, footnote 9 - there is this reference to the Jones Act and contacts:

> "9. Our conclusion does not foreclose such a procedure in different contexts, such as the Jones Act, 46 U.S.C. Section 688, where the pervasive regulation of the internal order of a ship may not be present." ***

The McCulloch case was decided in 1963 - seven years before the Rhoditis opinion was handed down.

In Benz v. Naviera Compania Hidalgo, 353 U.S. 138 (1959) the Supreme Court reached the same conclusion as in the McCulloch case about the National Labor Relations Act applying to American working men and their employers. The same opinion notes a different Congressional policy on wage statutes that refer to foreign seamen in United States Ports. (Page 144 of the opinion).

In Gerradin v. United Fruit Co., 60 F. 2d 927, 1932 the Court made the following statement about the effort of American owners to escape the liability of the Jones Act and defeat Congressional policy.

> "There can be no doubt about the power of Congress to impose liability upon its own citizens for acts done on the high seas or at other places outside its territorial jurisdiction. American Banana Co. v. United Fruit Co., 213 U.S. at page 356, 29 S. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047. Section 33 of

> of the Merchant Marine Act (46 USCA Section 688) has done this in the case of American citizens who own ships on which seamen are injured through their negligence, and it seems but a slight disregard of the symbol of foreign registry to apply an ordinary rule of torts to a shipowner who bears such an illusory shield. The question is not one of power, but of the meaning and scope of Rev. St. Section 4612."

The Gerradin opinion goes on to distinguish the internal discipline of a vessel from the right of a seaman to sue under the Jones Act. The Court stated at page 930:

> "This article relates only to matters of "'internal order"' or "'discipline'" on board a vessel of Honduran registry as to which the treaty might prevail even in an American port, but it does not affect rights of seamen to recover damages for negligence against an American citizen who owns the vessel. While section 33 literally covers even these matters of internal discipline, the subsequent treaty might require our courts to abstain from action as to them where there was the formal barrier of registry between the shipowner and his antagonist. Uravic v. Jarka, 282 U.S. at page 240, 51 S. Ct. 111, 75 L. Ed. 312. It does not affect the present action."

The judgment for the plaintiff seaman under the Jones Act was affirmed. (60 F. 2d 927)(2 Cir. 1932).

The case of Windward (London) Ltd. v. American Radio Ass'n - U.S. - , 42 LW 4234 (2/19/74) interpreted the Labor Management Relations Act but also referred to the Jones Act at footnote 14 on page 4237:

> "14 *** Although analysis of the Jones Act there obviously involved different considerations from analysis of the Labor Management Relations Act here, it is interested to note that some arguments at least are common to both cases." ***

This footnote shows the different interpretation given to Congressional policy in the two statutes - Labor Management Relations Act and the Jones Act.

Bartholomew v. Universe Tankships, Inc. 263 F. 2d 437. (2 Cir. 1959).

This case was cited in Rhoditis supra; Judge Medina defined substantial contacts at page 440 of the Bartholomew opinion:

> "(1) Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that "'substantial'" contacts are necessary. And while as indicated supra one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more than to say that in such a case the contact is so obviously substantial as to render unnecessary a further

probing into the facts.

> Some of the advantages of this simple formula are that it states a rational method of ascertaining the congressional intent, and that in its application there is no occasion to consider and "'weigh'" the contacts that do not exist, nor to go through any process of balancing one set of facts that are present against another set of facts that are absent, without any sure guide as to how the balancing is to be done. Accordingly, the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are substantial. Thus each factor is to be "'weighed'" and "'evaluated'" only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act. We shall now proceed to apply these principles to the case before us."

Other Courts have defined the meaning of substantiality under different statutes. For example, the Fair Labor Standards Act of 1938, Section 3(j), 29 U.S.C.A. Section 203(j) was interpreted in the

case of Philips v. Star Overall Dry Cleaning Co., Inc. 55 F. Supp. 238, S. D. N. Y. 1944. The Fair Labor Standards Act was held applicable although only 4% of the Laundry Corporation's production was regularly and continuously in intrastate commerce. At page 239 of the opinion the Court stated that the "plaintiffs" were, therefore, substantially engaged in the production of goods for commerce. This degree of work is much less than the substantial contacts that the steamship company and its affiliates had in this case.

The Philips judgment was affirmed in the Court of Appeals, Second Circuit. Opinion reported at 149 F. 2d 417 (2 Cir. 1945).

In Webster's Third New International dictionary, G. & C. Merriam Company, Publishers, Springfield, Massachusetts (1964) the word "substantial" is defined as follows at page 2280:***

The first "substantial" c: being of moment; IMPORTANT, ESSENTIAL.

The second "substantial" c: something of moment: an important or material matter, thing, or part.

Point II

WHEN THE COURTS HAVE CONSISTENTLY APPLIED CONGRESSIONAL POLICY ON THE JONES ACT FOR MANY YEARS, NO GOOD REASON EXISTS TO RE-EXAMINE THESE DECISIONS AND TO ALLOW FOREIGN-FLAG AMERICAN CITIZEN SHIPOWNERS TO ESCAPE UNITED STATES TAXES, PAY LOWER WAGES AND IGNORE UNITED STATES SHIP SAFETY STANDARDS.

Dating from Gerradin supra, which was decided in 1932, the courts have drawn a line between Congressional policy on the Jones Act and interference with the internal discipline of a foreign-flag vessel. Please see page 14 of this brief.

Lopes v. S.S. Ocean Daphne, 337 F. 2d 777, (4 Cir. 1964).

The Court refused to assess wage penalties against American owners of foreign-flag ships. The Court states this at page 780 of the opinion:

> "***See also Lauritzen v. Larsen, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953), and footnote 9 in McCulloch, discussing the application of the Jones Act, 46 U.S.C.A. Section 688, and distinguishing those cases on the ground that the application of that Act does not affect " 'the pervasive regulation of the internal order of a ship.' "

The brief for the petitioner cites Afroyim v. Rusk, 387 U.S. 253(1967) and Marchetti v. United States, 390 U.S. 39 (1968) as examples of reversal of prior rulings.

The opinion of the Court in the Afroyim case indicates that a prior decision had been a source of controversy and confusion. (Page 255). The Marchetti case concerned a defendant's assertion of the privilege against self-incrimination - a case completely different from a death case brought by a seaman's widow.

One of the most recent cases that considered the application of the Jones Act to a foreign seaman on a foreign-flag vessel is Pandazopoulos v. Universal Cruise Line, Inc., 365 F. Supp. 208. The Court stated at page 210 after quoting the Bartholomew case:

> "Id. at 441 (quoted with approval in Rhoditis, supra, 398 U.S. at 309, f.n. 4, 90 S. Ct. 1731). It is against this background of well settled precedent that the instant case must be considered."

In Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F. Supp. 236 (S.D.N.Y.1958) the Court disapproved the efforts of a shipowner to pile one corporate layer on top of another to secrete the actual ownership of the vessel.

With reference to wage statutes, the Court in Monteiro v. Sociadad Maritima San Nicolas, S.A., 280 F. 2d 568, made this comment at page 573:

The aim of Congress in enacting the Jones Act was to promote the American Merchant Marine. This purpose has been followed in these cases which gave the seaman or his survivor the right to proceed under the Jones Act:

Carroll v. United States, 133 F. 2d 690, (2 Cir. 1943).

Zielinski v. Empresa Hondurena Vapores, 113 F. Supp 93 (S. D. N. Y. 1953).

Voyiatzis v. National Shipping & Trading Corporation 199 F. Supp 920 (S. D. N. Y. 1961).

Groves v. Universe Tankships, Inc. 308 F. Supp. 826 (S. D. N. Y. 1970). (Decedent, a British seaman joined the vessel in Port of Spain, Trinidad and was killed in Japan).

Pavlou v. Ocean Traders Marine Corporation, 211 F. Supp. 320 (S. D. N. Y. 1962). (Cited favorably in Rhoditis, supra).

The Court of Appeals remanded this case for a new trial under the Jones Act and the General Maritime Law. The petition refers to the Jones Act only and consequently is in the nature of an interlocutory appeal.

The Gerradin case, supra, was decided in 1932, the Lauritzen case, supra, in 1953 and the Rhoditis case, supra, in 1970. The courts have followed Congressional policy and intent in applying the Jones Act to American owners of foreign

flag vessels when sufficient contacts existed. The contacts in this case, which are sketched at page 8 of this brief, indicate that the Jones Act governs the case at bar. The petitioner has shown no valid reason why this well settled precedent should be disturbed.

Conclusion

For the reasons set out above the petition for certiorari should be denied.

Respectfully submitted,

Thomas M. Breen
Attorney for Respondent

New York, New York
May 1974